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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

Rate Regulation)

MM Docket No. 92-266

COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.

Affiliated Regional Communications, Ltd. ("ARC") submits these comments in response to the Third Notice of Proposed Rulemaking in this docket, FCC 93-428, released August 27, 1993 ("Third NOPR"). Clearly, the Commission recognizes that strict adherence to benchmarks could pose an unintended deterrent to the future carriage of higher-cost programming services such as ARC's regional sports networks. With certain modifications, the Commission's regulatory proposals could largely remedy the disincentives to adding programming resulting from benchmark rate regulation previously identified by ARC and other programmers in this proceeding.

ARC's Interest In This Proceeding

ARC distributes regional and national sports programming to cable operators and other multichannel video programming distributors. ARC holds ownership interests in

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six regional sports programming services which produce substantial quantities of locally originated programming, featuring live coverage of a variety of sporting events involving professional and collegiate teams in their respective regions. Congress, the courts and the Commission have found that such programming serves important public interest objectives. See ARC's Petition for Reconsideration, filed in this proceeding on June 21, 1993 ("ARC Petition"), at 3-5.

However, the rights fees for professional and collegiate sports events and the equipment and personnel costs required for coverage of those events make regional sports services more costly for cable operators than many other types of programming services. Id. at 6-8. Consequently, ARC respectfully requests that any rate adjustment mechanism adopted by the Commission take into account the cost of the additional programming in order to avoid discrimination against higher-cost services, including local and regional news and sports services which clearly serve the public interest.

I. Adjustment Mechanisms Which Are Purely Benchmark-Based Discriminate Against High-Cost Programming Services.

Two of the three Commission proposals in the Third NOPR are based exclusively upon application of the Commission's benchmark rates. Regardless of the merits of the benchmarks in setting initial regulated rates, mechanical

cation of those benchmarks to determine future rate adjustments for the addition or deletion of programming services on a regulated tier is inappropriate. Such inflexible adjustment mechanisms would result in future carriage decisions based on artificial regulatory disincentives rather than on the merits of and consumer demand for a particular programming service.

The Commission has proposed two different rate adjustment mechanisms based solely on the application of the benchmark per-channel rate tables developed in the Commission's First Report and Order in this proceeding, FCC 93-177, released May 3, 1993 ("Rate Order"). Under one proposal, when channels are added or deleted from a regulated service tier, the new regulated rate would be determined by multiplying the new per-channel benchmark (based on the new total number of regulated channels and satellite channels on the system) by the total number of channels on the affected tier. Third NOPR at ¶138. Under the alternative benchmark-based proposal, the new regulated rate would be calculated by multiplying the new per-channel benchmark rate by the number of new programming services being added to the tier. Id. at ¶137. Under the latter proposal, the rate for all pre-existing channels, including those on the affected tier, would continue to be determined using the "old" per-channel benchmark.¹ Id.

¹ Neither proposal would apply the "new" per-channel benchmark rates to services on other regulated tiers unaffected by the addition or deletion of channels.

ARC supports the Commission's tentative decision to reject the former benchmark approach because it would affirmatively discourage carriage of higher-cost programming services such as ARC's regional sports services. Using the example of Home Sports Entertainment ("HSE"), one of ARC's regional sports networks, the disincentive to add regional sports services under this approach is readily apparent. As reported in the ARC Petition at 6, HSE's base rate to cable operators within HSE's "inner market" is \$1.00 per subscriber. An inner market cable system with 55 regulated channels and 40 satellite-delivered channels serving 10,000 or more subscribers has an existing per-channel rate of \$0.434 according to the benchmark tables in Appendix D to the Rate Order. To add HSE, the cable operator would incur an additional cost of \$1.00 per subscriber. However, the addition of HSE would add another regulated channel to the system, dropping the per-channel benchmark rate to approximately \$0.428. Under this proposal, the new, lower per-channel benchmark would be applied to HSE and to every other channel on the tier to which HSE is added. Consequently, the cable operator would lose approximately \$0.57 per subscriber on HSE alone and an additional \$0.0056 per subscriber for each additional channel on the same tier as HSE.²

² This retroactive "penalty" on all existing channels would preclude the addition of new services with lower rates than HSE. For example, according to Multichannel News,

The Commission's other purely benchmark-based proposal would apply the "new" per-channel benchmark rate only to the newly-added programming services, leaving the existing rates unchanged for all other services on the affected tier. By eliminating the "penalty" imposed through application of the lower per-channel benchmark to existing services, this alternative clearly moves in the right direction. However, rigid application of the new benchmark rate to the additional programming service(s) continues to limit arbitrarily what a cable operator can pay to carry a new service. Consequently, adoption of this proposal without any modification or alternative would not remedy the methodology's discrimination against higher-cost services. Although this approach should be preserved as an alternative for cable operators because it is easy to apply and provides cable operators with the incentive to add certain programming, a "safety valve" must be added to ensure that the Commission's methodology does not

March 29, 1993, at 1, USA Network's base rate for carriage on a service tier with 90 to 92 percent penetration was \$0.34 per subscriber. Although the cable operator in the above example could add USA Network and earn approximately \$0.09 per subscriber on that service alone under the new per-channel benchmark, the "penalty" of a reduced rate on all other services on that tier would make the addition of USA Network a losing proposition if there were more than 16 channels on the tier. Depending on the penetration level of the tier on which USA Network is carried, its per-subscriber rate may increase to \$0.46, creating a greater disincentive to carriage. See also Petition for Clarification and Reconsideration of The Disney Channel, filed in this proceeding on June 21, 1993, at 14-15.

discriminate against higher-cost programming services and arbitrarily "tilt" future carriage decisions.

II. The Commission's Third Proposal Is More Complicated Than Benchmark Mechanisms But Protects Against Discrimination.

The Commission's third proposal is the only alternative which directly takes into account the cost of the new programming services to the cable operator. Under this proposal, a cable operator adding programming to a regulated service tier would determine the new regulated rate for that tier by: (a) determining the difference between the existing per-channel tier rate and corresponding per-channel programming costs; (b) multiplying that sum by the percentage decrease in the new per-channel benchmark over the old per-channel benchmark; and (c) adding the new total programming costs on a per-channel basis. Third NOPR at ¶143. Although the proposed adjustment mechanism is far more complicated than purely benchmark-based proposals, this alternative facilitates carriage decisions based on the merits of the new programming service, rather than financial disincentives caused by regulation. To the extent that this proposal eliminates the artificial incentive inherent in the benchmark-based proposals to favor low-cost programming services in future carriage decisions, ARC supports adoption of this proposal.

However, because this proposal would result in application of a reduced per-channel benchmark rate to all

pre-existing channels on the affected tier through an "efficiency factor," it suffers from the same infirmity as the first proposal discussed above. Where a cable operator has charged the permissible per-channel benchmark rate for a given tier of programming service -- which rate is presumed by the Commission to be reasonable -- there is no logical reason to reduce the per-channel rate applicable to those services simply because the operator incurs additional expenses to provide additional programming service(s). Instead, the Commission should maintain the prevailing rate for the existing services and apply the new "adjusted" benchmark rate only to the new programming services.

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Respectfully submitted,

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